

## **EXHIBIT C**

### **RESTRICTIVE COVENANT GRAYS HARBOR HISTORICAL SEAPORT AUTHORITY, SEAPORT PROPERTY**

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Grays Harbor Historical Seaport Authority (hereafter "GHHSA"), their successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") will occur at the property that is the subject of this Restrictive Covenant. The Remedial Action is described in the following documents:

*Draft Cleanup Action Plan*, Environment International, Ltd., 2003

*Draft Remedial Investigation/Feasibility Study*, Environment International, Ltd., 2002

These documents are on file at Ecology's Southwest Regional Office.

This Restrictive Covenant is required because the Remedial Action will result in solid waste remaining on the property beneath a soil cover and because concentrations of residual petroleum hydrocarbons and some metals exceed the Model Toxics Control Act Method A Cleanup Level for soil and groundwater established under WAC 173-340-720.

The undersigned, GHHSA, are the fee owners of real property (hereafter "Property") in the County of Grays Harbor, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Exhibit D of the Consent Decree and made a part hereof by reference.

GHHSA makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of, or interest in, the Property (hereafter "Owner").

#### **Section 1.**

- a. The Maintenance Area of the Property contains a surface soil cap concealing potentially contaminated soils. The surface soil shall not be removed or damaged and shall be maintained to prevent possible release and exposure of potentially contaminated soils.
- b. A bioswale and groundwater barrier system along the northern property boundary will prevent potentially contaminated groundwater and surface water runoff from migrating to adjacent residential properties. The Owner shall not alter, modify or remove this system or any of its components, nor remove its enclosing fence.
- c. The Landfill Area of the Property contains garbage concealed beneath a soil cover. The Owner shall not alter, modify, or remove the soil cover in any manner that may result in the release or exposure to the environment of the contained refuse or create a new exposure pathway without prior written approval from Ecology.

- d. Fencing on the Property shall not be removed or damaged and shall be maintained to provide security of the Property.
- e. Vegetation on the property shall not be removed or damaged and shall be maintained to ensure the integrity of the vegetative cover in the Remedial Action areas.
- f. No soil, surface water, or groundwater may be taken for any use from the Property unless the removal is part of monitoring activities associated with an Ecology-approved monitoring plan.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the Property must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the Property. The Owner shall consummate no conveyance of title, easement, lease, or other interest in the Property without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

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Les Bolton  
Grays Harbor Historical Seaport Authority

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Date Signed